TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 250.

FRANCIS DAINESE, APPELLANT,

vs.

THE BOARD OF PUBLIC WORKS OF THE DISTRICT OF COLUMBIA, CONSISTING OF HENRY D. COOKE, ALEXANDER R. SHEPHERD, SAMUEL P. BROWN, JAMES A. MAGRUDER, AND ADOLPH CLUSS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 14, 1873.

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1 *Original bill.—Filed Nov.* 29, 1872.

In the supreme court of the District of Columbia.

FRANCIS DAINESE, PLAINTIFF, *against* HENRY D. COOKE, ALEXANDER R. SHEPherd, Samuel P. Brown, James A. Magruder, and Adolph Cluss, composing the board of public works for said District.	No. 2993. Equity. Docket 12.

To the supreme court of the District of Columbia, holding an equity court:

The plaintiff states as follows:

1. He is a citizen of the United States, and a resident of the District of Columbia.

2. The defendants are citizens and residents of the District of Columbia, and members of and compose the board of public works of said District; and the said Adolph Cluss is made a party in his capacity of inspector of buildings.

2 3. That heretofore, to wit, on the 26th day of August, 1872, your petitioner made a contract with one Wesley Frey, a contractor and builder, for the erection of a block of frame houses on the south side of C street, between 6th and 7th streets, southeast, which block was to compose four (4) houses, 15 feet front each, 50 feet deep, and 3 stories high; that a permit to erect said block, after reading said contract, was granted on the 18th day of September, 1872, by Adolph Cluss, then inspector of buildings, a certified copy of which permit is annexed hereto, marked F. D., No. 1, and prayed to be taken and read as a part hereof; that, in pursuance of said permit, the contractor, Wesley Frey, entered upon the work of building said block, and had got the same to that point of completion where the roof is ready to be put on, when, on the 25th day of November, 1872, your petitioner was handed an official notice, dated November 22, 1872, from the board of

3 public works, signed by said Adolph Cluss, inspector of buildings, (which is filed herewith, marked F. D., No. 2,) notifying him that, unless he removed said buildings immediately, he would be compelled to take them down at once at complainant's costs.

4. Your petitioner states that he made the contract in good faith, and that work on said building was commenced, and had been carried on, as complainant is informed and believes, in strict accordance with said contract and permit; and on such information he denies that the material of which said buildings *is* being erected is insufficient or dangerous, or in violation of the said permit.

5. That he has already expended five thousand dollars in and about said buildings.

6. That if said buildings are taken down, as threatened, it will work irreparable injury to complainant.

PRAYERS.

Your petitioner prays:

1. That your honorable court will issue your preliminary order

4 restraining and enjoining the said Adolph Cluss and other the defendants; and that the said injunction may be made perpetual,

enjoining and restraining them from tearing down or otherwise interfering with the said buildings.

2. For the usual subpœna against the said Henry D. Cooke, Alexander R. Shepherd, Samuel P. Brown, James A. Magruder, and Adolph Cluss, members of the board of public wor compelling them to appear and answer the exigencies of this bill.

3. And for such other and further relief as to your honor may seem right.

F. DAINESE.

JOHN N. OLIVA, *Solicitor for Complainant.*

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Francis Dainese, do solemnly swear that I have read the bill by me subscribed and know the contents thereof; and that the facts contained therein upon my own knowledge stated are true, and that the facts therein stated upon the information of others I believe to be true.

F. DAINESE.

Sworn and subscribed before me this 27th of November, A. D. 1872.
SAM'L C. MILLS, *J. P.* [SEAL.]

Exhibit to Bill F. D., No. 1.

No. 891.] BOARD OF PUBLIC WORKS, D. C.,
OFFICE OF INSPECTOR OF BUILDINGS,
Washington, September 18, 1872.

Mr. F. Dainese is hereby permitted to erect, on a lot situated on the south side of C street, between Sixth and Seventh streets southeast, about 75 feet from the corner of Seventh street, four frame buildings, fifteen feet in front and fifty feet in depth, and three stories high, having a shingle roof, and having a back building of by feet in size, and stor high. Said buildings to be arranged for dwellings, to be heated by stoves, and to be constructed in conformity with existing building-regulations as amended by board of public works.

Applicant represents there is no brick house within 24 feet.

Satisfactory evidence has been given that the contract for the above permit was made prior to the enforcement of the building-regulations.

ADOLF CLUSS.
Inspector of Buildings.

Exhibit to Bill F. D., No. 2.

This agreement, made this twenty-sixth day of August, A. D. 1872, between Wesley Fry, carpenter and builder, and Francis Dainese, for account of Albert Cingria, witnesses:

That for and in consideration of eight hundred dollars, payable by installments, as stated below, the said Fry agrees, and hereby covenants, to erect and complete, on lot 11, in square 873, a building agreeable to the dimensions, plans, and specifications hereto annexed, and to work out of the lumber on and in the mill now standing on square 84, and on the quarters at Fort Stanton, the complete wood-work of said new buildings, embracing the timbers, joist, scantlings, frames, doors,

windows, blinds, shutters, floors, partitions, boards, fencing-stuff, sheet'-ing, weather-boarding, and all, said Fry having beforehand fully examined the said buildings and the materials therein, and pronounced "them to answer all purposes for building and completing, with the materials thereat, the new building now contracted for, and also an additional building at the circle, the latter to be contracted for hereafter; and said Fry agrees to carefully pull down, at his cost, the said buildings, and to prep are, dress, and haul, at his costs, all the material necessary for the completi on of this new building in conformity with the plans and specifications above mentioned.

The only items, in addition to the materials in said mill and fort, which said Dainese will be required to furnish to said Fry being the following, viz: About 2,000 feet siding for the front, with such brackets and mouldings as he deems proper; also, brick for four flues, shingles
for the roof, nails, locks, braces, hinges, and screws, the paper
8 board with which said Fry is to cover the inside walls and ceil-
ings; and when the materials are prepared at the mill and fort aforesaid, and ready for transportation to the building-ground, said Dainese will lend said Fry, that he may haul the same, one cart and one horse, but without driver, the said cart and horse to be returned by Fry to Dainese after he has done his hauling.

The payments to be as follows, viz: $200 after the framing and raising of the building; $200 additional after the weather-boarding and outside frames, the covering, shingling, and roofing and fences are finished; $200 additional after the floors, partitions, stairs, and inside frames are put up and the lining with paper boards is done; and the last $200 after final completion of the building and the surrender of the keys; and until then, the material in all the buildings being in Fry's custody, he constitutes himself responsible therefor.

Said Fry agrees to the foregoing, and promises to commence and
9 continue the work uninterruptedly, complete and neatly finish
the building in six months from date, and have all timber and frames plumb, floors level, lining-boards level, windows capped, the said Dainese reserving the right to complete the building at Fry's costs if the latter fails to finish it as above agreed, or violates any of the covenants herein mentioned, in which latter case said Fry shall forfeit all claims for work already done.

Signed, sealed, and delivered, in double original, the day and year hereinbefore written, in the presence of—

WESLEY his + mark. FRY. [L. S.]

F. DAINESE. [L. S.]

Signed, sealed, and delivered in the presence of—

D. W. ANDERSON.

AUGUST 28, 1872.

I certify that I find the above copy of the contract or agreement referred to in bill 2993 to be correct.

R. J. MEIGS, *Clerk.*

10 *Specifications for annexed plans.*

1st. Plan No. 1 is the first story of a building to be erected on lot 11, square 873, for Mr. A. Cingria, by Wesley Fry, contractor, front sixty

one feet four inches by fifty feet deep, and is to be framed on sills resting on posts, and be divided into four stores on first story, with lodgings on 2d and 3d stories over each store.

2d. Plan 2 is the division of 2d and 3d stories, the sills to run all around the building and under the partitions, and also one sill to run midways of each store from front to rear; sills to stand on posts placed in the ground three feet deep, with a rock at the bottom, and five feet apart, to be squared at both ends, and charred and tarred, and to project above ground one foot and inches above the grade of the sidewalk, for the sills to stand on.

3d. The roof to be shingled, with a 13½-foot pitch, and have two skylights at the center and one window at each end. The rafters to
11 be supported each by two scantlings resting on thick gutters laid from partition to partition, and shingles to be tarred after being laid on the roof, or painted.

4. First story to be eleven feet, 2d do. ten feet, and 3d do. nine feet, high in the clear.

5. The building to be weather-boarded: front with cypress or pine 6 inches wide, siding lapped one inch; sides and rear with wide cullings taken from the boards on the mill, in square 84, and to be lapped over one inch, and make tight work.

6. Corner posts, at the four corners and at each partition, to be 4 × 6 timbers, and to be tied to the sills, frames, and roof-casings by iron braces, besides the usual wooden braces.

7. Each story and roof to have frames like the sills, the latter to be of 6 × 8, the others of lighter timber.

8. The joists and scantlings to be sixteen inches from center to center; partition-scantling, ceiling-joists, and rafters to be two feet from center to center.

12 9. The floors of the stores to be made out of two-inch boards, now standing on Fort Stanton, and mill-dressed and well-jointed to match, level and tight, but not tongued and grooved; the floors of second and third stories and all partition-boards to be dressed, tongued and grooved, and well-matched.

10. The stairs from the street and from rear to be boarded with tongued and grooved boards, except where balusters, one inch square, made out of boards, will suit better.

11. The steps to be made out of the thickest boards at the mill, not, however, over 1½ inch thick, and to be dressed and made 11 inches wide and about 8 in rise; under the stairs, at the stores, to be empty, but all other vacant places at second and third stories to be made into closets, covered with dressed tongued and grooved boards and shelved.

12. In lieu of lathing and plastering, the inside to be lined both at partitions and ceilings with rough boards, and then covered with
13 paper boards or cartoons, nailed on said boards, according to patentee's directions annexed.

13. Frame casings and wash-boards to be beaded.

14. The flues to project 4 feet over roof; mantels to be put at the four parlors of first story, with two closets at each mantel, like those of parlor in house on square 158.

15. Wooden gutters, spouts, privies, and fences to each partition.

16. Doors to be made out of panels at the mill, to be dressed on the back and well matched; all windows to be plain, like those of house in square 158; privy-boxes to be water-tight; outside doors weather-stripped.

The foregoing specifications to be performed for the sum and condi-

tions stated in the contract to which this is annexed, and a part thereof done in duplicate.

I certify that I have compared the within and above specifications with the original referred to in the bill, and find it a correct copy.

R. J. MEIGS, *Clerk.*

14 *Exhibit to bill marked F. D., No. 3.*

BOARD OF PUBLIC WORKS, D. C.,
OFFICE OF INSPECTOR OF BUILDINGS,
Washington, November 22, 1872.

F. DAINESE, Esq., *National Hotel, Washington, D. C.:*

SIR: The enclosed note has been sent to you on October 26, 1872, and you have not taken notice of it. I therefore give you hereby official notice that your frame buildings, now in course of erection, on south C street between Sixth and Seventh streets east, are in violation of the building-regulations in force in this city, and to the observance of which you were held by the permit given you. Your buildings do not come within the rules prescribed for frame buildings; they are of insufficient material, and dangerous to the community; as such they must be removed immediately, or I shall be compelled to have the same taken down at once, at your cost and expense, as directed by law.

ADOLF CLUSS,
Inspector of Buildings.

15 BOARD OF PUBLIC WORKS, D. C.,
OFFICE OF INSPECTOR OF BUILDINGS,
Washington, October 26, 1872.

F. DAINESE, Esq., *National Hotel, Washington, D. C.:*

SIR: The board of health protests to this office against the frame buildings which you have undertaken to erect, of altogether insufficient material, on south C street between Sixth and Seventh streets east. I have personally given notice to the master-workman on the spot, under date of October 19, in the presence of a responsible citizen, that these structures are objected to by this department. Now, I repeat this formally to you, so as to avoid trouble.

Very respectfully, yours,

ADOLF CLUSS,
Inspector of Buildings.

Affidavit of Wesley Fry to original bill.—Filed Nov. 29, 1872.

DISTRICT OF COLUMBIA,
County of Washington, ss:

On this 27th day of November, A. D. 1872, personally appeared before me Wesley Fry, who, being duly sworn according to law,
16 deposes and states that, on the 26th of August, 1872, he entered into a contract with Francis Dainese to build a block of four frame houses, on C street S. E., between 6th and 7th streets S. E., in the city of Washington, and on the 18th September, 1872, Adolf Cluss, inspector of buildings, after reading said contract, granted affiant a permit to build said houses, which permit is in the name of F. Dainese; that the material of which said building is being erected is in strict ac-

cordance with the contract, and not unsound or dangerous to the community, and that the building is strongly and substantially erected.

his
WESLEY + FREY.
mark.

Subscribed and sworn to before me this 27th day of November, 1872.

D. W. ANDERSON, [SEAL.]
Justice of the Peace.

17 *Restraining order.—Filed Nov.* 29, 1872.

In the supreme court of the District of Columbia.

F. DAINESE
vs.
HENRY D. COOKE ET AL. } 2993. Equity Doc. 12.

Nov. 29, 1872, ordered at chambers that the prayer for injunction, &c., of the within bill be heard on Saturday, the 7th of December, 1872, at 2 o'clock p. m., before me at chambers, in the city hall, and that defendants in the mean time be restrained as prayed.

ANDREW WYLIE.

Temporary injunction.—Issued Nov'r 29, 1872.

In the supreme court of the District of Columbia.

F. DAINESE
vs.
H. D. COOKE ET AL. } 2993. Eq. Dock. 12.

An original bill praying an injunction to restrain defendants from tearing down or otherwise interfering with the buildings men-
18 tioned in the bill in this cause filed, is this day filed. Hearing is fixed for Saturday, December 7, 1872, at 2 o'clock p. m. Until further order, you are hereby restrained as prayed.

By order of the court:

A. WYLIE, *Justice, &c.*

1872. Nov. 29th.
Attest: R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR., *Assistant Clerk.*

Summons to answer.—Issued Nov. 29, 1872.

In the supreme court of the District of Columbia, Nov'r 29, 1872.

FRANCIS DAINESE, COMPL'T,
against
BOARD OF PUBLIC WORKS, DEF'TS. } No. 2993. Equity Docket 12.

The President of the United States to H. D. Cooke, A. R. Shepherd, S. P. Brown, J. A. Magruder, and A. Cluss, defendants:

You are hereby commanded to appear in this court at its first
19 special term, occurring twenty days after service of *of* this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk, &c.*
By R. J. MEIGS, JR., *Ass't Clerk.*

MEMORANDUM.—That the defendants are to enter their appearance in this suit in the clerk's office on or before the special term to which this writ is returnable, otherwise the bill may be taken for confessed.

Marshal's return.

Summoned all, and served notice for injunction on all.

A. SHARP, *Marshal.*

Nov'r 29th, 1872.

20 *Answer of Board of Public Works.—Filed Jan.* 4, 1873.

In the supreme court of the District of Columbia.

FRANCIS DAINESE, PLAINTIFF,
against
HENRY D. COOKE, ALEXANDER R. SHEPHERD, Samuel P. Brown, James A. Magruder, Adolph Cluss, defendants.

No. 2993. Equity Docket 12.

The joint and separate answer of the Board of Public Works:

1st. It is admitted that the plaintiff is a citizen of the United States, and a resident of the District of Columbia.

2d. It is admitted that the defendants are citizens and residents of the District of Columbia, and members of and compose the board of public works of said District, and that Adolph Cluss has been inspector of buildings in said district.

21 3d. The defendants, as members of the board of public works, have no knowledge of the existence of a contract between the plaintiff and one Wesley Fry, for the erection of a block of frame houses, on the south side of C street, between 6th and 7th sts. southeast, which block was to compose four houses, fifteen feet front each by fifty feet deep, and three stories high; but they are informed that such a contract, dated the 26th of August, 1872, was on or about the 18th of September, 1872, brought to the notice of the inspector of buildings aforesaid, and that he issued the permit referred to in the plaintiff's bill, and a copy of which is annexed thereto as Exhibit F. D., No. 1. They cannot admit that the buildings contracted for between the plaintiff and said Fry have been or are being erected according to said contract, as brought to the attention of the said inspector of buildings; and they aver, on information and belief, that they are not constructed or being constructed

22 agreeably to said constract, and in order that this may be fully ascertained and known to the court, the plaintiff is called on to produce said contract, with the specifications connected therewith, before the court.

On their information and belief they admit that, on the 25th day of November, 1872, a notice, dated November the 22d, 1872, signed Adolf Cluss, was sent by the authority of the defendants to the plaintiff, a correct copy of which, together with a copy of a notice or communication from the said Cluss to the said plaintiff, dated October the 26th, 1872, is annexed to the plaintiff's bill as Exhibit F. D., No. 2.

4th. It is admitted that the contract between the plaintiff and said Fry was made in good faith; but it is denied that the plaintiff's information and belief as to the mode in which the work under said

23 contract has been commenced and carried on is correct, and from

all the information which they have been able to obtain they say that the material used in said buildings is insufficient and dangerous, and in violation of the permit granted said plaintiff by said Cluss, as inspector of buildings in said District, and they deny the contrary averments made by the plaintiff.

5. They have no knowledge what the amount already expended on said buildings by the plaintiff is, nor any information in relation thereto other than his statement.

6th. They deny, that if said buildings are taken down, as proposed in the notice of said Cluss, that it will work irreparable injury to the plaintiff; and they submit that for any injury which he might sustain thereby he would have an ample remedy at law; and they respectfully ask that they may have the same advantage of this defence as if the bill of the plaintiff were demurred to.

24 7th. Anxious to present all of the facts of the case, as well as the law thereof, to the court, the defendants say that, by the act of the 21st of February, 1871, creating the present government of the District of Columbia, they are authorized "to make all necessary regulations respecting the construction of private buildings in the said District;" that accordingly on the 19th of August, 1872, building-regulations were adopted, and immediately published by them, a printed copy of which is hereto annexed as Exhibit A of this answer, and made a part thereof, especially sections 3, 5, 6, 9, 32, 33, 66. They also refer to the building-regulations previously existing in the city of Washington, as found in Sheahan's Digest of the Laws of the City of Washington, title No. 5, pp. 99 to 109, and in Webb's Digest, pp. 56–66 & 213, and to so much of the charter of the city of Washington, approved May 7, 1848, as relates to building-material and unsafe buildings; and they

25 say that on or about the 23d day of October, 1872, the board of health called attention to the said buildings of the plaintiff as unsafe and dangerous, as will more fully appear by reference to a copy of its letter, hereto annexed, and made part hereof as Exhibit AA; that the buildings were accordingly examined by the said Adolf Cluss, superintendent of buildings, as aforesaid, and discovered by him to be insufficient in material and workmanship, and dangerous, and in disregard of the permit granted by him, and of the building-regulations aforesaid; and that thereupon they determined that the further construction of said buildings should be arrested, or be made to conform to said regulations; that the plaintiff was so notified, as appears from Exhibit F. D., No. 2, to this bill, and that he refused to act in accordance with the determination of the board and as notified to do; and that thereupon the board determined to remove said buildings, and notified the plaint-

26 iff accordingly, allowing him to remove the same, and informing him that if he did not do so it would be done otherwise. That the plaintiff refused to remove the buildings, or to correct the defects in them, and that thereupon the board requested the major of police to place at the disposal of the superintendent of buildings a sufficient force to enable him to enforce the law and remove the said buildings; and they further say, on their information and belief, that the said buildings are unsafe and dangerous, and are being constructed of imperfect and insufficient material, and are such as should not be allowed to exist in the city of Washington, as will more fully appear by reference to the statements of S. T. G. Morsell, Thomas C. Wilson, Charles Edmonston, and Robert I. Fleming, regularly sworn to, and made part hereof as Exhibits B, C, D, and E, which said statements they say are from prominent and capable builders, and in all respects correct; and for

27 further and additional information in relation to the matter of the plaintiff's bill they refer to the answer of Adolf Cluss, inspector of buildings, from whom the permit of the plaintiff was obtained.

8. Having fully answered the bill of the plaintiff, they pray that the temporary injunction heretofore granted may be dissolved, the rule to show cause be discharged, and that they may be hence dismissed with costs, &c., and they will pray, &c.

H. D. COOKE.
ALEX. R. SHEPHERD.
JAMES A. MAGRUDER.
S. P. BROWN.
ADOLF CLUSS.

WILLIAM A. COOK,
Sol' for Def't.

DISTRICT OF COLUMBIA, *ss:*

28 Personally appeared before me S. P. Brown & Adolf Cluss, who, being duly sworn, say that they have heard read the answer by them subscribed, and know the contents thereof, and that the facts therein stated upon their personal knowledge are true, and that the facts therein stated upon information and belief they believe to be true.

S. P. BROWN.
ADOLF CLUSS.

Sworn and subscribed to before me this 9th day of December, 1872.
JAMES DONALDSON, [SEAL.]
Justice of the Peace.

29 *Exhibit A to answer.*

Exhibit A to def't's answer.

Building regulations of the District of Columbia, established by the board of public works agreeably to the provision of the 37th section of the act of Congress entitled "An act to provide a government for the District of Columbia," approved February 21, 1871. Washington: Republican job-office print., 1872.

29*a* BOARD OF PUBLIC WORKS, DISTRICT OF COLUMBIA,
Washington, August 19, 1872.

The act of Congress creating the present government for the District of Columbia prescribes, among the duties of the board of public works, that "they shall make all necessary regulations respecting the construction of private buildings in the District of Columbia, subject to the supervision of the legislative assembly."

It is therefore ordered that the following rules and regulations providing for the construction, alteration, repair, and removing of buildings in said District, and for their inspection, be in force from and after date:

Building limits.

SECTION 1. All that portion of the District of Columbia lying within the limits of the cities of Washington and Georgetown shall constitute the building limits designated under these rules, in which all walls, structures, buildings, or parts thereof, except bridges, quays, wharves, or buildings belonging to the Government of the United

States, shall hereafter be built, altered, or repaired in conformity with the provisions of these rules.

SEC. 2. In the construction of these rules the following terms shall have the respective meaning hereinafter assigned to them:

Definitions of technical terms.

"External wall" shall apply to every outer wall or vertical enclosure of a building other than a party-wall.

"Party-wall" shall apply to every wall used or built as a separation of any building from any other building, with a view to the same being occupied by different persons, or intended to be hereafter used for that purpose.

"Partition-wall" shall be understood to mean any interior wall of masonry or brick-work.

"Partition" shall be construed to mean any interior division constructed of iron, glass, wood, lath, and plaster, or either of these materials combined.

"Foundation-wall" shall be understood to mean that portion of
29*b* any exterior wall below the level of the adjoining earth or pavement, and that portion of any partition or party wall below the level of the basement or cellar-floor.

"Cellar" shall be construed to mean the lowest story of a building, if partially or entirely below the level of the adjoining street or ground, and not suitable for habitation.

"Basement" shall be construed to mean a story partially below the level of the adjoining street, and suitable and adapted for habitation.

"First story" shall be construed to mean the story the floor of which is first above the level of the sidewalk or adjoining ground. The other stories shall be numbered in regular succession, counting upward.

"Attic story" shall be construed to mean a story situated either in whole or in part in the roof.

"Wooden building" shall be construed to include any building of which any external or party wall is constructed in whole or in part of wood.

"Tenement house" shall be construed to include every house, building, or portion thereof, which is rented, leased, let, or hired out to be occupied, or is occupied as the house or residence of more than three families living independently of another, and doing their cooking upon the premises, but having a common right in the halls, stair-way, yard, water-closets or privies, or some of them.

"Lodging house" shall be construed to mean and include any house, building, or portion thereof, in which persons are lodged for hire for a single night, or for less than a week at one time.

"Shed" shall be construed to mean a structure, one or more sides of which are entirely or mainly open.

"Building owner" shall be construed to mean such one of the owners of the premises separated by or adjoining to any party structure as is desirous of executing any work in respect to such party structure, and the owner of the other premises shall be called the "adjoining owner."

SEC. 3. The inspector of buildings under the board of public works of the District of Columbia shall be charged with the survey and inspection of buildings and the enforcement of these rules.

Enforcement of rules.

29*c* SEC. 4. The inspector of buildings shall, before he enters upon the duties of his office, take and subscribe an oath or affirmation that he will faithfully, impartially, and truly execute and perform the duties imposed upon him under these rules, and enforce the rules fairly according to the best of his judgment and ability,

Inspector of buildings.

which said oath or affirmation shall be filed in the office of the board of public works. He shall, moreover, before entering on the duties of his office, execute a bond to the board of public works in the sum of twenty thousand dollars, with three sureties, to be approved by the said board at a regular meeting, conditioned for the faithful performance of the duties as enumerated above, which bond shall be for the use of any or all persons who may be aggrieved by the act or neglect of said officer.

Duties of inspector.

SEC. 5. It shall be the duty of the inspector of buildings to sign all certificates and notices required to be issued under these rules. To keep on file all applications and notices received. To keep the record of all violations of any of these rules, and all other matters relative thereto; report them, when necessary, to the attorney of the board of public works, who shall prosecute them without delay; and no suit shall be discontinued or compromised unless by express orders of the board of public works, issued at a regular meeting. To keep on hand blanks for applications and complaints, which shall be used by those having business to transact with the inspector, on all occasions for which they are intended; to make an annual report of the operations of his office to the board of public works.

Inspector to examine buildings.

SEC. 6. The inspector of buildings shall examine all houses or buildings in course of erection, alteration, or repair, as often as necessary; to see that they are erected, constructed, altered, or repaired in accordance with the requirements of these rules, that the materials used are suitable for the purpose, and that the work is done in a substantial manner, and is of sufficient strength and solidity to answer the purpose for which it is designed. It shall also be his duty to examine all buildings observed or reported as dangerous, and to make a record of all such examinations, with the name of the street and the number of the building, the names of the owner or lessee, and for what purpose occupied; and, in case of fire, the probable origin thereof. He shall examine any buildings under application to raise, enlarge, alter, or build upon, when necessary, and make a record of the condition of the same. He shall, on application for that purpose, furnish the owner or owners, contractor or contractors, his certificate that their houses or buildings are in all respects conformable to law and properly constructed.

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Assistant inspectors.

SEC. 7. The inspector of buildings shall, by and with the approval of the board of public works, have power to appoint assistant inspectors, to assist him in the performance of his duties, who shall be architects, or able and experienced mechanics, competent to perform all the duties of the office to which they are appointed; and should the inspector of buildings be prevented by illness or any other unavoidable circumstances from attending to the duties of his office, he may, with the consent of the board of public works, appoint some other person as his deputy to perform all his duties for such time as he may be temporarily prevented from executing them. And the inspector of buildings shall also have been engaged in conducting or carrying on business as an architect or builder for at least seven years, of which he shall make oath before the board of public works.

Right to enter buildings.

SEC. 8. The officer or officers charged with the enforcement of these rules shall, as far as may be necessary for the performance of their duties, have the right to enter any building or premises within the aforesaid building limits upon showing a badge designating their office, and any person who shall interfere with or prevent him or them in the performance of his or their duties shall be liable to a fine of not less than ten nor more than forty dollars.

SEC. 9. Persons intending to erect any new building or to alter any house or building, so as to make it substantially a new building, or so as to touch its stability or safety, must make written application for, and obtain, the permit before commencing work, under a penalty of fifty dollars for each violation of this rule.

Building permit.

29e Plans and specifications of the proposed improvements shall be submitted to the inspector of buildings whenever he is in doubt about the propriety of issuing the permit. In case the permit is refused, an appeal may be taken to the board of public works, the said appellant to state in writing the ground on which the appeal is based. In general, appeals may be taken in like manner to the board of public works from all rulings of the inspector of buildings.

SEC. 10. It shall and may be lawful for any person or persons engaged in erecting or repairing a building to occupy, with the building materials, the inside half of the breadth of the foot-way and one-third part of the breadth of the carriage-way, and no more, in front of any lot on which the building is being erected or repaired; and the inspector of buildings shall, with the consent of either adjoining owner, be authorized to permit the occupation of the frontage of one adjoining lot in special cases and for the same purposes; said materials to be placed in such position and so arranged as may be approved by the inspector of buildings or his duly authorized agent, but no gutter shall thereby be obtructed so as to prevent the free passage of the drainage of the same; provided, however, that nothing herein contained shall prevent the granting of permits for the temporary damming of a gutter for collecting water for building purposes when there are no other available means, and under such conditions as the inspector of buildings may prescribe. No streets laid with modern pavements shall be used for the purpose of making mortar unless such be done in a tight mortar-pan, and nothing shall be construed in this section so that the free passage of wagons, carts, drays, or other carriages may be obstructed or impeded.

Occupation of street for building purposes.

The inspector of buildings may issue permits for erecting temporary sheds at building sites for the use of builders.

All materials and rubbish shall be removed by the contractor or owner of the property within five days after said building shall be completed, or when directed by the proper officer or officers.

SEC. 11. It shall not be lawful for any person or persons to make any excavation for a cellar, vault, or other structure, or cause it to be done, upon the front or side of any lot adjoining a street without properly protecting the same.

Protection in front of excavation.

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SEC. 12. Vaults may be made not beyond the inner line of the pavement curb, to be securely covered with substantial flagging, or arched with hard brick, the crown of the arch to be at least twelve inches below the established surface of the foot-way; and any opening in the top of the vault shall be adjoining to or near the curb-stone, and have a suitable iron grating or covering placed therein, and no iron grating or other fixture shall project above or be sunk below the established graduation of the pavement.

Vaults.

SEC. 13. No projections, porticos, bay-windows, areas, steps, or cellar-doors shall be made or increased beyond the building line without a special permit having been obtained.

Projections beyond building lines.

SEC. 14. Every building, with the exceptions hereinafter mentioned, shall be built of brick, stone, iron, or other hard and incombustible material, and with foundations resting upon the solid ground, or upon concrete, piles, planks, or other solid substructure.

Construction of buildings.

Every wall, constructed of brick, stone, or other similar substance, shall be properly bonded and solidly built with lime or cement mortar. The thickness of every wall as hereinafter determined shall be the minimum thickness for dwellings, and, as applied to solid walls, laid with block stone in horizontal courses, or with brick. If any walls are laid with irregular rubble-work, the thickness shall be one-fourth greater than the thickness given below. Thin ashlar-facings shall not be counted in determining the thickness of walls under these rules. In all buildings hereafter erected, situated on the street corner, the bearing-wall thereof, that is, the wall on the street upon which the beams rest, shall be four inches thicker in all cases than is otherwise provided for by these rules.

Thickness of walls.

SEC. 15. The thickness of the walls of all buildings hereafter erected, constructed, built, or altered shall be as follows, to wit: In all buildings not more than thirty-five feet high and less than twenty-five feet in width, the cellar or foundation walls shall be not less than thirteen inches in thickness, the external and party walls not less than nine inches; for buildings of same height, but twenty-five feet or more in width, the external and party walls shall not be less than thirteen inches thick for the full height thereof; in all buildings exceeding thirty-five but not exceeding forty-five feet in height, the cellar or foundation walls shall not be less than eighteen inches in thickness, the front and party walls of stories above not less than thirteen inches in thickness; in all buildings exceeding forty-five, but not exceeding fifty-five feet in height, the foundation or cellar walls shall not be less than eighteen inches in thickness, the party walls not less than thirteen inches, and the front walls not less than eighteen inches to the height of the first story, and thirteen inches the remainder of the height; and whenever any builder, owner, or contractor may construct or erect any building to a greater height than those above specified, or for other purposes than dwellings, the increased thickness of the walls shall be determined by the inspector of buildings; provided, that in any case where the proposed building is to be used for a store-house, or similar purposes, the party or division walls shall not be less than thirteen inches the full height thereof. The height of all walls as above shall be computed from the curb-level. The bottom course for all foundation-walls resting upon the ground shall be at least nine inches wider than the thickness above given for the foundation-walls.

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Recesses and openings in walls.

SEC. 16. No recess of any kind shall be made in any nine-inch party-wall. Whenever it becomes desirable to cut a door-way through any party-wall separating two buildings, a notice of the intention to do so shall be filed with the inspector of buildings, who shall decide what safeguards are necessary for the closing of said door-way during the time it is not used.

Walls, how carried up and anchored.

SEC. 17. All the inclosing walls of a building must be brought up simultaneously, and in no case shall the work on the side walls be ahead of the work on the front wall more than the height of one story.

The side, end, or party walls shall be anchored at each tier of beams, at intervals of not more than ten feet apart, with good strong wrought-iron anchors, one-half inch by one inch, well built into the side walls and well fastened to the side of the beams by not less than three wrought-iron nails, at least one-fourth of an inch in diameter, so as to form continuous ties across the building on each floor.

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Walls to be coped when not cornieed.

SEC. 18. All party-walls shall be brought up through the roof-covering and shall be built up at least six inches above the flat of the roof of the highest building of which such wall forms a

part for the full extent of the flat, and shall be covered by brick laid on slate, or a coping of stone or metal, and so as effectually to prevent the connection of the roofing of any two or more houses or buildings.

Brick-work between floor-timbers.

SEC. 19. In all adjoining buildings hereafter erected, the floor-timbers, built into the same party-wall from opposite sides, shall have not less than four inches bearing, and shall be separated by not less than four inches of solid brick-work.

Brick backing of ashlared walls.

SEC. 20. Exterior walls, faced with stone, shall have a backing of not less than nine inches of hard brick-work, laid in lime or cement mortar. The stone facing of a wall shall always be securely tied to the brick backing by suitable iron clamps. All brick facings must be securely tied to the backing.

Roofing materials.

SEC. 21. All buildings hereafter erected shall be roofed with slate, tin, or other non-combustible roofing material, and all buildings with flat roofs or having no dormers shall have a scuttle not less than two by three feet, with a permanent step-ladder or flight of stairs thereto.

Chimney flues and hearths.

SEC. 22. All chimneys shall be built of brick, stone, or other fire-proof non-conducting material. All brick flues, without reference to the purpose for which they may be originally intended to be used, shall be smoothly plastered inside with good parging mortar from top to bottom, and on the outside between the ceiling joists and rafters. Brick flues not starting from the foundation-walls shall be securely built into the brick-work of the walls to which they are hung, and shall be supported by courses of brick, corbeled out from the main wall by successive projections. In cases where a breast of a chimney shall project more than four inches in any nine-inch wall, or
29*i* nine inches in a fourteen-inch wall, it shall be started and built on the same line from the foundation, or it shall rest upon a footing of masonry or iron, supported by iron beams having a secure bearing on masonry or iron at either end.

All flues shall be topped out at least four feet above the roof of the building or buildings to which they belong or adjoin. The brick topping out of chimneys shall not have more than four inches projection unless covered by a cap of stone or iron properly secured. Hearths of fireplaces or grates shall be laid upon trimmer-arches of brick, the centering of which must be struck by bricklayers on completion, or upon bars of iron supporting a bed of two courses of brick-work. All flues and chimneys shall be so constructed that fire will not communicate with the adjacent wood-work; and no wooden joist, rafter, beam, or girder shall therefore be built into any chimney or flue whatever, or shall be placed at a less distance than two inches from the outside of the brick-work of any flue, nor shall any flue be built in any party or division wall, unless the same be more than nine inches thick. In no case shall a nail be driven into the masonry of any flue, nor shall any base, flooring, or roofing, or any other wood-work be placed against any brick or other flues until the same shall be well plastered with plaster of Paris behind such wood-work.

Tin or other metal flues or pipes.

SEC. 23. No tin or other metal flue or flues, pipe or pipes, of a single thickness of metal intended to convey heated air in any building hereafter to be built, altered, or erected, shall be allowed, unless the same be in a wall of brick or stone; in all other cases said flues or pipes shall be so constructed as to have a thickness of not less than one inch of plaster Paris, or its equivalent, between the said pipe or flue, and any timber or wood-work adjoining the frame, otherwise the pipes shall be doubled—that is, two pipes, one inside the

other, at least one inch apart, and filled in with non-conducting and non-combustible material.

Smoke-pipes and furnaces.

SEC. 24. No smoke-pipe in any building with wooden or combustible floors or ceilings shall enter any flue unless it shall be at least 18 inches from either the floors or ceilings; in cases where such pipes pass through stud or wooden partitions, they shall be guarded by either a double collar of metal with at least 29*j* four inches of air-space and holes for ventilation, or by other means equally secure, and approved by the inspector of buildings. In all cases where furnaces or boilers of any kind are used, the smoke-pipe must be kept at least two feet below beams or ceilings, unless said beams or ceilings are properly protected by a shield or tin-plate suspended above said smoke-pipe with a sufficient space for the free circulation of air above and below said shield, and the smoke-pipe shall in all cases be kept at least eight inches from the beams or ceilings, as aforesaid; and the top of all furnaces set in brick must be covered with brick, slate, or tin-plate, supported by iron bars, and so constructed as to be perfectly tight; said covering to be in addition to, and not less than six inches from, the ordinary covering to the hot-air chamber. If, however, there is not height enough to build a furnace-top at least four inches below the floors, beams, or ceilings, the floor-beams must be trimmed around the furnace; and said covering and the trimmers and headers must be at least four inches from the same. The top of portable furnaces, not set in brick, shall be kept at least one foot below the beams or ceilings, with a shield of tin-plate, made tight, suspended at least two inches below the said beams or ceilings, and extending one foot beyond the top of the furnace on all sides.

Hot-air registers.

SEC. 25. All hot-air registers hereafter placed in the floor of any building shall have an air-space extending all around their register-boxes, which must be guarded by tin on the outside.

Openings for doors and windows.

SEC. 26. All openings for doors and windows in all buildings, except as otherwise provided, shall have a good and sufficient arch of stone or brick, well built and keyed, and with good and sufficient abutments, or a lintel of stone or iron.

On all openings in which the lintel shall be less than the thickness of the wall to be supported, there shall be a good timber lintel on the inside of the other lintel, which shall rest at each end not more than four inches on any wall, and shall have an arch turned over said timber lintel. All arches over openings for ranges shall be supported by iron bars.

Openings with walls above.

29*k* SEC. 27. Openings of more than ten feet in width and upon which a wall rests, shall be covered with iron beams or girders; if cast, they are to have wrought-iron tie-rods of sufficient strength, well fastened at each end of the beam or girder. All such beams shall have cast-iron shoes on the upper side to answer for the skew-back of a brick or cut-stone arch, which said arch shall always be turned over the same, and the arch shall in no case be less than twelve inches in height by the width of the wall to be supported. Cut stone or hard brick arches, with two wrought-iron tie-rods of sufficient strength, may be turned over any opening less than thirty feet in width, provided they have skew-backs of cut stone, of cast or wrought iron, with which the bars or tension-rods shall be properly secured.

The above clause is intended to meet cases where the arch has not abutments of sufficient size to resist its thrust.

All lintels of stone fronts, returned over a corner opening, shall be

of iron of the full breadth of the wall to be supported, and shall be made safe as above detailed; any support at the corner shall be of brick, cut stone, or iron, and if of iron, it shall be in the shape of a double column—that is, an outer and inner column—and the inner column shall be of sufficient strength to sustain safely the whole weight, and the outer column shall be made of sufficient size to allow a space of at least one inch between it and the inner column, which space shall be solidly filled with plaster of Paris, or some other non-conducting material which is equally secure.

Drains.

SEC. 28. All buildings hereafter built shall have trapped brick, iron, or tile drains with air-tight joints, with a regular fall to the public sewers, and shall be properly entered therein if the sewer is already constructed, and if not constructed, such connections shall be made whenever such sewer shall be constructed.

Dwellings upon filled land.

SEC. 29. All dwellings erected upon filled or made land shall have a bed of concrete spread over the cellar-bottom, or shall be paved with brick laid in cement throughout the whole extent of the building.

29*l* Ventilation of water-closets.

SEC. 30. It shall be unlawful to make any water-closet without either an external window or suitable ventilating flue running into a chimney-flue or through the roof.

Wooden supports for walls prohibited.

SEC. 31. It shall not be lawful for any person or persons to erect, construct, or build any rear wall, or any party or division wall between two or more houses or buildings upon any wooden supports whatever; provided, however, that this shall not be taken to prohibit wooden girders over piazzas, bow-windows, or any opening not exceeding ten feet.

WOODEN STRUCTURES.

Restrictions upon erection of frame buildings.

SEC. 32. Wooden or frame buildings may be erected within the building limits, designated under these rules, under the following limitations and restrictions, provided that they are not erected or placed within less than twenty-four feet of any house built of brick or other incombustible material, without having first obtained a special permit based upon sufficient reasons; but if such wooden building is intended to be occupied as a blacksmith's or whitesmith's shop, carpenter's shop, factory, a livery stable, or as a stable not used for domestic purposes, it shall not be erected within less than fifty feet of any stone or brick house without special permit as aforesaid; provided, however, that this rule shall not be construed to apply to any piazza, platform, balcony, or bath-room which does not exceed ten feet in width, or any bay or oriel window. Sheds not exceeding twelve feet in height at the peak or highest part thereof, my be erected of wood. Wooden or frame sheds, for storage or other purposes, may be located and constructed upon wharves in such a manner as the inspector of buildings may direct. Privies, not exceeding ten feet square and ten feet high, covered with boards or shingles, may be erected in streets not sewered. But all depositories for ashes shall be built of brick or other fire-proof material without wood in any part thereof. Any sign, of whatever material it may be constructed, now erected or that hereafter may be erected, on the top or street front of any building, whenever it may be or may hereafter become rotten or unsafe, shall be taken down and removed on the order of the inspector of buildings.

29*m* Height.

SEC. 33. No wooden building hereafter erected shall exceed the height of two stories up to the flat of the roof.

Brick partition in wooden buildings.

SEC. 34. No wooden building to be used for the purpose of a dwelling-house shall be erected in a range of more than forty feet without the intervention of a brick partition-wall at least nine inches in thickness, and said wall shall be carried at least six inches above the roof, whether said roof be flat or pitched.

Wooden buildings for mechanical and other purposes.

SEC. 35. Any wooden building to be used for other purposes than a dwelling-house shall be subject in construction to such restrictions as the inspector of buildings shall designate in the permit given by him for the erection of said building, and shall not be built at a less distance than ten feet from any wooden dwelling.

Foundation, etc.

SEC. 36. All wooden buildings shall be built upon proper piers of not less than twelve inches square, or upon posts of locust or cedar; and all these erections shall be properly braced and secured.

Chimneys and flues.

SEC. 37. All chimneys in wooden buildings shall be built of brick or other fire-proof non-conducting material. All brick flues shall be smoothly plastered inside with mortar from top to bottom, and outside between the roofing and ceiling joists.

In no case shall chimneys rest upon any flooring without a footing of masonry or iron supported by iron bars having a secure bearing on masonry or iron at either end. All flues shall be topped out at least four feet above the roof of the building to which they belong. The brick topping out of chimneys shall not have more than two inches projection, unless covered by a cap of metal or stone properly secured.

Hearths.

SEC. 38. Hearths of fire-places or grates shall be laid upon brick or other trimmer-arches, or upon bars of iron supporting a bed of brick-work.

Wood-work near flues.

SEC. 39. No wood-work of any kind shall be placed at a less distance than one inch from the outside brick-work of any flue. In no case shall a nail be driven into the masonry of any flue. No 29*n* wood-work shall be placed at a less distance than one inch from any tin or other metal flue or flues, pipe or pipes, used, or intended to be used, to convey heated air in any building, unless such flues or pipes be cased with metal, leaving a free circulation of air all around the same.

Smoke-pipes in frame buildings.

SEC. 40. No smoke-pipe in any such wooden or frame building shall hereafter enter any flue unless the said pipe shall be at least twelve (12) inches from the floors or ceilings; and in all cases where the smoke-pipes pass through stud or wooden partition of any kind, whether the same be plastered or not, they shall be guarded by either a double column of metal, with at least an inch of air-space and holes for ventilation, or its equivalent.

Repairs to damaged wooden buildings.

SEC. 41. Every wooden building constructed contrary to the terms of this ordinance which may hereafter be damaged by fire or otherwise to an amount not greater than one-half the value thereof, exclusive of the value of the foundation, may be repaired or rebuilt; but if such damage shall amount to more than one-half of such value thereof, then such building shall not be repaired or rebuilt, but shall be taken down. The amount and extent of such damage by fire or otherwise shall be determined by the inspector of buildings.

Repairs to wooden buildings.

SEC. 42. It shall be lawful for the owner or other party interested to make any necessary repairs upon any wooden or frame building already built, provided that the height of said building to the eaves shall not be increased thereby. It shall also be lawful to substitute for a gravel or pitch roof a flat roof covered with metal or

other non-combustible material; but no wooden building now erected, or hereafter to be erected, shall be otherwise raised, roofed, enlarged, or built upon in such a manner that, were such buildings wholly built or constructed under these rules, it would be in violation of any of them.

Prohibition of wooden buildings.

SEC. 43. It shall not be lawful to erect, construct, enlarge, or remove any wooden building anywhere within the ninth, twelfth, thirteenth, and fifteenth electoral districts, nor anywhere in 29o the tenth district north of Pennsylvania avenue; nor shall such wooden buildings be lawful on both sides of Pennsylvania avenue from First street west to Rock Creek, on both sides of Seventh and Fourteenth streets west from Pennsylvania avenue to Boundary street, and on both sides of K street north from Vermont avenue to Twenty-fifth street west.

Frame back-buildings and stables off the main street are exempt from the operation of this section for the streets enumerated above; and sheds and privies, as specified under twelfth section, all exempt throughout from the operation of this section.

The area embraced in this section shall be duly enlarged whenever the progress of improvements should make it advisable, due legal notice being given thereof previously.

Violations of building regulations.

SEC. 44. Any person or persons violating any of the provisions of the preceding rules for the erection of wooden buildings shall, upon written notice from the inspector of buildings, served upon him or them personally, or posted conspicuously upon the building erected, or in progress of erection, alteration, or repair, in violation thereof, upon his or their neglect or refusal to alter said building, in conformity with the provisions of this ordinance, for a period of three days from said service or said posting, be liable to a penalty of not less than twenty nor more than fifty dollars, and to a like penalty for every day's continuance thereof.

PARTY STRUCTURES.

Party-walls.

SEC. 45. In case of party-walls built in part upon adjoining lots, under former or existing authority therefor, one moiety of the charge for the regulation dimensions, or so much thereof as the building owner shall have occasion to make use of, shall be paid for by him before he shall anyways use or break into the wall, the charge or value thereof to be computed by the inspector of buildings, unless the concerned parties mutally agree upon a person or persons for such purpose.

Insufficient party-walls.

SEC. 46. It shall be the duty of the inspector of buildings, upon the application of any building owner, or his authorized agent, to examine any or all existing party or division walls; and 29p if deemed and adjudged by him to be defective, out of repair, or otherwise unfit for the purpose of such new buildings about to be erected, such party or division walls shall be made good, repaired, or taken down by the building owner, as the decision may be, the cost and expense of which repair or removal, together with the expense of the new wall or walls to be erected in lieu thereof, shall be borne and paid exclusively by him; and he shall also make good all damages occasioned thereby to the adjoining premises, or to the internal finishings thereof; but if in such case the building owner prefers to build an independent new wall of his own by the side of the old party-wall, he shall be relieved from reimbursing the adjoining owner for former outlay in building the party-wall.

Foundations of party-walls.

SEC. 47. The foundations of any party-walls erected hereafter which shall be laid not less than five feet below grade on a good solid bottom, or on artificial means, preventing the walls from settling, shall be considered as legal structures; and any building owner who will excavate to a greater depth must, besides bearing the cost of necessary underpinning, protect the adjoining owner from all injury in consequence of such excavation, be it by cracks in the wall, settling, or otherwise.

Party-fences.

SEC. 48. All partition or party fences shall be kept in good and sufficient repair by the proprietors of the ground on each side at their joint expense; provided, the ground on each side shall be inclosed, used, or occupied; and if any person whose duty it shall be to make or keep in good repair any fence or part of a fence shall refuse or neglect so to do for five days after request being made by the other party interested, or his agent, then it shall be lawful for the party so making request, as aforesaid, to make or repair the whole fence or part of a fence, and to recover one-half of the expense thereof from the person so refusing or neglecting: provided, also, that no fence erected under the authority of this act shall be less than five nor more than seven feet in height, except by the consent of the parties interested on both sides of such fence, and that the expense of making such fence shall not exceed the market value of a plain substantial structure of the kind.

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SEC. 49. If any person shall inclose ground adjoining to that already inclosed, whereby he, she, or they shall be benefited by any fence before erected, the person so benefited shall pay therefor a just and reasonable compensation, regard being had to the condition of the fence at the time.

DANGEROUS STRUCTURES.

Dangerous structures.

SEC. 50. It shall be the duty of the inspector of buildings to inspect all buildings or parts of buildings, stagings, or other structures being dangerous or unsafe on his own observation, on the written request of any two citizens, or upon being notified by any officer of the Metropolitan police, and if the same be insufficient and dangerous, he shall cause a description of such structure, with street and number, to be entered in the books of his department.

Notice to owner.

SEC. 51. The inspector of buildings shall immediately serve a notice in writing upon the owner, agent, or other party having interest in the said structure, requiring the same to be made safe and secure, or removed, as may be deemed necessary; provided that, except in cases demanding immediate attention, the interested parties may appeal within forty-eight hours by writing to the board of public works, and if the decision of said board shall be against the sufficiency of such walls or structures, the owner thereof shall forthwith comply with the decision given. Upon the refusal or neglect of the owner, or other interested party, the inspector of buildings may cause such unsafe or dangerous structure to be taken down, or otherwise made safe, and the cost and charges shall become a lien upon the said estate, to be collected according to law.

Hoist-ways.

SEC. 52. The lessee or occupant of any warehouse, store, manufactory, or other buildings in which there are hoist-ways or other openings, besides the usual stair-ways, shall cause the same to be securely protected by railings, or such other appliances as may be deemed necessary in special cases by the inspector of buildings.

Steam-engines.

SEC. 53. No steam-engines shall be erected within the above-described building limits without a special permit obtained from the board of public works, which will be issued or refused after the inspector of buildings has reported thereon.

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TENEMENT AND LODGING HOUSES.

Tenement and lodging houses.

SEC. 54. The inspector of buildings shall examine and approve the plans of any house, building, or portion thereof, intended to be used, occupied, rented, or leased as a tenement or lodging house, before the erection is commenced.

RESTRICTIONS AS TO DWELLINGS AND ROOMS FOR HUMAN HABITATION.

Restrictions as to dwellings and rooms for human habitation.

SEC. 55. No dwelling whatever shall be constructed havings windows on one side only; and no room intended for human habitation or sleeping shall have less than eight feet clear height.

PUBLIC HALLS, ETC.

Inspection of plans of halls, &c.

SEC. 56. The inspector of buildings shall not give a permit for the erection of any building to be used for public assemblies until he has carefully examined the plans and specifications thereof, and ascertained that the plans conform to the requirements of these regulations. A copy of said specification shall be deposited in the office of said inspector.

Arrangements of doors, stair-ways, seats, and aisles in buildings of a public character.

SEC. 57. In all buildings of a public character, already erected or hereafter to be built, such as public halls and places of amusement or instruction, the doors shall open outwards, the hall-doors, stair-way, seats, and aisles shall be so arranged as to facilitate egress in cases of fire or accident, and to afford the requisite and proper accommodation for the public protection in such cases. And all aisles and passage-ways in said buildings, devoted to purposes of amusement or instruction, shall be kept free from camp-stools, chairs, sofas, and other obstructions during any service, exhibition, lecture, performance, concert, ball, or any public assemblage, and the inspector of buildings may, at any time, serve a written or printed notice on the owner, lessee, or manager of any of said buildings, directing any act or thing to be done in or about the arrangements of said buildings, and the several appliances therewith connected, such as halls, doors, stairs, windows, seats, aisles, and escapes, so as to afford the greatest pos-

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sible security and good ventilation to the public and the uses to which they may be severally applied.

Water-attachments.

SEC. 58. The owners and lessees of theatres and public places of amusement are required, during the time said places are opened to the public, to keep attached to a plug or water-attachment, to be furnished by them for that purpose, sufficient hose of the size used by the fire department of Washington and Georgetown, to extend to the furthest limits of said place of amusement, and said hose shall be kept at all times in good order and repair, and ready for immediate use.

Violation of preceding rules.

SEC. 59. For any neglect or violation of the provisions of the 56th, 57th, and 58th sections of these rules, a penalty of one hundred dollars shall be imposed upon the owner, lessee, or other occupant of said places.

Power to pass upon the manner of construction.

SEC. 60. The inspector of buildings named under these rules shall have full power in passing upon any question relative to the mode, manner of construction, or material to be used in the erection, alteration, or repair of any building within the

above determined building limit, where the same is not specially provided for herein, to make the same conform to the true intent, meaning, and spirit of the several provisions hereof, and shall also have discretionary power, upon application therefor, to modify or vary any of the several provisions of this act, to meet the requirements of special cases, where the same do not conflict with the public safety and the public good, so that substantial justice may be done, but no such deviation shall be permitted except the same shall be entered on the record of said inspector, and a certificate be first issued to the party applying for the same. Such certificate to be issued only upon an order first being obtained therefor from the board of public works.

Penalties.

SEC. 61. If any person or persons as aforesaid shall fail to have any new building, alteration, or repair constructed or completed as required by these rules, or otherwise fail to comply with their provisions, he or they so offending shall pay the sum of not less than fifty dollars nor more than five hundred dollars for each and every offence, and the further sum of one hundred dollars for each and every calendar month that said house or building shall be suffered to remain without the necessary alteration and the procuring of a proper certificate that the concerned building conforms to the requirements of these rules.

29*t*

This applies to all cases where no penalty is specially provided for in the preceding sections.

These sums and all other penalties imposed under these rules shall be recoverable as debts are now or hereafter by law recovered. And the board of public works reserve the right in their discretion, good and sufficient cause being shown therefor, to remit any fines or penalties which any person or persons may incur under any of the provisions of this act.

Injunction may be obtained.

SEC. 61. If upon inspection it should appear that the work upon any building is going on in violation of any of the provisions of this ordinance the inspector of buildings shall forthwith notify the owner or owners, contractor or contractors, of such violation; and if after such notice the said parties, or any or either of them, shall proceed in the erection or construction of such building, it shall be lawful, after due notice in writing setting forth the said violation particularly, for the supreme court of the District of Columbia, or the justice thereof holding the equity court of said District, to issue forthwith an injunction restraining such person or persons from further progress in said work until the facts of the case have been investigated and determined. And if it shall appear to the said court upon such investigation that such building does not in all respects conform to the provisions of this ordinance, said court, besides enforcing the penalty hereinbefore designated, shall issue an injunction to restrain the continuance of the work and to remove so much of the said building as may be decreed by the court within such time as the court may appoint.

MISCELLANEOUS.

Blacksmiths and whitesmiths' shop.

SEC. 63. No blacksmiths or whitesmiths' shop, machine-shop, or steam saw-mill shall be erected within thirty feet of any dwelling-house, nor shall any such shop now erected be extended, under a penalty of not less than two or more than five dollars for every day such erection or extension shall remain after notice shall be given by the inspector of buildings for the removal thereof.

29*u*

SEC. 64. It shall not be lawful for any person or persons to establish,

Brick-yards, &c.

lay off, or conduct any brick-yard, brick-kiln, pottery-furnace, or any slaughter-house, or any soap or candle manufactory, bone-boiling or other establishment, whereby offensive odors are generated to the detriment or injury of the neighborhood, upon any rear site or upon any site not used as aforesaid within the period of twelve months, within one hundred and fifty yards of any dwelling-house occupied or used within the designated building limits, unless the person or persons desiring to establish, lay off, or conduct any of the enumerated establishments shall first file with the inspector of buildings the written consent of two-thirds of the owners and occupants of houses within said one hundred and fifty yards, and the said inspector shall, after due examination, approve of it. Any violation of this rule shall be punishable with a fine of not less than ten or more than twenty dollars for every day the violation of this rule is continued.

Coal and wood yards.

SEC. 65. And it shall not be lawful for any person or persons to establish or locate any coal-yard, lumber-yard, or wood-yard upon any new site or any site not used as such for a period of six months, within fifty feet of any dwelling-house, unless the person or persons desiring to establish or locate any such establishment shall first file, with the inspector of buildings, the written consent of the owner or owners, occupant or occupants of each and every house within fifty feet of the ground which is contemplated to be occupied. Violations of this rule shall be punishable with a fine of not less than five nor more than ten dollars for every day he, she, or they shall continue to violate the same.

Repeal of former acts.

SEC. 66. All building regulations of the late corporations of Washington and Georgetown, whenever they conflict or are inconsistent with these rules, are hereby repealed.

29*v* We certify that on the 19th of August, 1872, the foregoing building regulations were adopted by us for the District of Columbia.

HENRY D. COOKE.
ALEX. R. SHEPHERD.
A. B. MULLETT.
S. P. BROWN.
JA'S A. MAGRUDER.

Attest:
CHA'S S. JOHNSON,
Assistant Secretary.

Exhibit A to def't's answer.

30 *Exhibit A A to def't's answer.—Filed Ja'y* 4, 1873.

DISTRICT OF COLUMBIA, BOARD OF HEALTH,
OFFICE OF THE HEALTH OFFICER,
Washington, Oct. 22d, 1872.

To the hon. board of public works, Washington, D. C.:

GENTLEMEN: Your attention is respectfully invited to the dangerous manner in which the buildings now being erected by Henry De Naisy on C st., bet. 6 & 7 S. E., are constructed. The lumber is old and decayed, and is being put together, three stories high, without mortising, and is objected to by the citizens in the vicinity.

Very respectfully, your ob't serv't,

T. S. VERDI,
Health Officer.

31 *Exhibit B to answer.*

WASHINGTON, *Dec'r 5th*, 1872.

A. CLUSS, Esq.:

SIR: In compliance with your request I have visited and examined the buildings in course of erection on C street between 6th and 7th st. southeast, for Francis Dainese, esq., and will say (without prejudice or partiality) that they are a burlesque on the trade, a damage to the neighborhood, and, in my judgment, will be unsafe for occupancy when completed.

Respectfully, yours,

S. T. G. MORSELL.

Subscribed and sworn to before me this fifth day of December, A. D. 1872.

[SEAL.] CHA'S CON'S CALLAN,
Notary Public.

32 *Exhibit C to answer.*

WASHINGTON, *Dec.* 4, 1872.

Mr. ADOLF CLUSS:

DEAR SIR: According to your request I have examined the buildings in course of erection on C street between 6th and 7th sts. southeast, and in my opinion they are the poorest that I have ever seen. A great portion of the material is decayed, and from manner they are put up I think they are unsafe for family to occupy.

Respectfully submitted for your consideration.

THOMAS C. WILSON.

Sworn and subscribed to before me this 5th day of December, 1872.

[SEAL.] THO'S J. MYERS,
Notary Public.

33 *Exhibit D to answer.*

WASHINGTON, *Dec.* 3*d*, 1872.

Mr. ADOLF CLUSS:

DEAR SIR: To-day I examined the building of Francis Dainese in course of erection on C street, 6 & 7th streets southeast, and do not hesitate to say that it is no framed building at all, but a lot of old half-rotten stuff nailed up, and unsafe to be occupied by human beings, and ought of right to be taken down by the public authorities without delay.

Respectfully submitted for your consideration.

CHARLES EDMONSTON.

Sworn to and subscribed before me on this fourth day of December, A. D. 1872.

[SEAL.] N. CALLAN,
Notary Public.

34 *Exhibit E to answer.*

WASHINGTON, D. C., *Dec.* 15*th*, 1872.

ADOLF CLUSS, esq., *Architect:*

DEAR SIR: Agreeably with your request I have carefully examined the frame (tenement) building, now in course of erection on C street

bet. 6th & 7th street southeast, by Mr. Dainese, and would respectfully report that I find the lumber unsound and perfectly worthless for building purposes. The workmanship is of the very worst character. There is not even a particle of framing anywhere to be found, and the whole "shell" is liable to fall or to be blown down at any time.

Upon the whole I think that this "shell" should be removed at once for the protection of life and limb, and that if the proper authorities allow such structures as the above to be put up, thereby counte-
35 nancing the murder of unsuspecting persons who may chance to reside in them, are certainly derelict in their duty.

Very respectfully, yours, &c.,

ROB'T I. FLEMING, *Builder.*

Sworn to and acknowledged before me this 5th day of December, 1872.

[SEAL.] J. F. OLMSTEAD,
Notary Public.

36 *Affidavit of W. H. Hoffman on behalf of defendants.—Filed Ja'y 7, 1873.*

WASHINGTON, D. C., *December 24th*, 1872.

At the request of Adolph Cluss, esq., inspector of buildings for the District of Columbia, I visited and inspected the structures now in course of erection on south side of C street between 6th and 7th streets, in the city of Washington, D. C., by Francis Dainese, and found them to be constructed with, in the most part, rotten lumber, and in a most unworkmanlike and miserable manner, only supported by the temporary bracing which must be removed, and are not only unsafe, but will never be fit for occupancy. The safety of the public and the appearance of the city demand their immediate removal.

W'M H. HOFFMAN,
Late Insp'r B'd'gs New York City.

Sworn to and subscribed before me this fourth day of January, A. D. 1873.

[SEAL.] JAMES E. WAUGH,
Notary Public.

37 *Answer of A. Cluss.—Filed Jan' 4, 1873.*

In the supreme court of the District of Columbia.

FRANCIS DAINESE, PLAINTIFF,
against
HENRY D. COOKE, ALEXANDER R. SHEPherd, Samuel P. Brown, James A. Magruder, Adolf Cluss, comprising the board of public works for said District. } 2993. Equity docket 12.

The separate answer of Adolf Cluss as inspector of buildings.

1st. To so much of the plaintiff's bill as I am advised it is necessary for me to answer, I say that on the 24 June, 1871, I was appointed by the board of public works superintendent or inspector of buildings in the District of Columbia, and qualified as such, and continue to act in that capacity. On or about the 18th of September last, the plaint-
38 iff appeared before me and asked for a permit to build a row

of four three-story frames with shingle roofs. I refused it, it being contrary to the old building regulations as to height, and to the amended or new regulations as to height and covering of roof. It appearing to me that the contract of the plaintiff for the buildings was made before the promulgation of the amended building regulations, I finally consented to issue a permit, annexed to the plaintiff's bill, and which allowed, so far as it could, the construction of the buildings three stories high and with shingle roofs. This was done for the reason heretofore stated. It is untrue that the contract was read and virtually approved by me; it was only presented to show that it was made on the 18th of August, 1872, before the publication the new building rules, and as an inducement on this account to permit the construction of the buildings three stories with shingle roofs. It did not, nor was it in-
39 tended to, authorize the construction of any other than substantial frame buildings of proper material and of proper construction. My attention was called to the character of the buildings through the board of health, and an impartial inspection was immediately made of the buildings, which resulted in the discovery that they were put together without any efforts to properly frame them or without any of the devices used by skilled mechanics to unite the sticks of timber into a frame-work or house; that insufficient and rotten pieces of timber had been pieced out and spliced to obtain the necessary lengths—merely nailed together without regard to level, plumb, and bonding.

I am fully satisfied, and aver on my personal knowledge, that the said buildings as they are being constructed, especially on account of the height and size of the structures, are frail and unsafe, and will be dangerous to tenants, to citizens passing by them, jeopardize the life
40 of firemen, and tend to prevent improvements in the section in which they are built; and that if completed they can only be regarded as a nuisance in the community, and that they are in violation of the permit granted by me, as well as of the existing building regulations. I further say that I have done all which I could with the plaintiff to have proper buildings constructed and to prevent a resort to the ultimate measure of removal, without any success and with a fixed determination on his part to construct and maintain said buildings according to his own wishes and views, and in disregard of the authorities of the District, and the good and welfare of the community.

2. I deny any and all allegations in said bill not heretofore denied or admitted, and not consistent with the statement and averments above given.

3d. And I pray that so far as respects me as inspector of build-
41 ings, that the temporary injunction may be dissolved, the rule to show cause be discharged, and that I may hence be dismissed with costs.

ADOLF CLUSS.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me Adolf Cluss, who, being duly sworn, says that he has heard read the answer by him subscribed, and knows the contents thereof, and that the facts therein stated upon his personal knowledge are true, and that the facts therein stated upon information and belief he believes to be true.

ADOLF CLUSS.

Sworn and subscribed to before me this tenth day of December, 1872.

CHARLES WALTER, *J. P.*

42 *Affidavit of S. J. Fague.—Filed Jan. 7, 1873.*

In the supreme court of the District of Columbia.

F. DAINESE
vs. } 2993. Equity doc. 12.
BOARD OF PUBLIC WORKS.

Solomon J. Fague, being sworn according to law, deposes and states that he has been a carpenter and builder in the city of Washington for 10 years, and is now a measurer of builders' work; that he has examined the buildings in progress of erection for Mr. Dainese, and being the same mentioned and forming the subject-matter of this suit, and found the same of second-hand lumber. As to its size, the sills are larger than used generally for such buildings, as also the studding. Some few pieces of the lumber are *doated*, but not so as to weaken or injure the construction of the building. As the building is yet in an unfinished state, and the builder is on the work strenghtening by braces and stud-
43 ding the central parts of the building, I can see no good reason why the building should be condemned. The timbers are much stronger than many new frames that have come under my observation. I do not believe the buildings dangerous to the public. The materials are second-hand but well seasoned, and I think the buildings as good and substantial as are usually built.

SOLOMON J. FAGUE.

Subscribed and sworn to before me this 6th day of December, A. D. 1872.

ZACH. B. BROOKE, *J. P.* [SEAL.]

Affidavit of Dennis Fry, on behalf of comp'lt.—Filed Jan. 7, 1873.

In the supreme court of the District of Columbia.

F. DAINESE
vs. } 2993. Equity.
BOARD OF PUBLIC WORKS.

Dennis Fry, being duly sworn, states that he has worked on the building now in course of erection by Wesley Fry for F. Dainese on C street, between 6th and 7th street east, and have examined the same, and be-
lieve the same to be safe and sound, and the lumber of good
44 material, and not dangerous to the public. I have heard read the affidavit of Alfred Short and concur therein.

his
DENNIS + FRY.
mark.

Witness: W. W. KIRBY.

Sworn to and subscribed before me this 6th day of December, 1872.
[SEAL.] E. J. KLOPFER,
Notary Public.

Affidavit of Alfred Short, on behalf of complainant.—Filed Jan. 7, 1873.

In the supreme court of the District of Columbia.

F. DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Equity docket 12.

Alfred Short, being duly sworn, deposes and states that he has examined the building erected by Wesley Fry for F. Dainese on C street, between 6th and 7th st's southeast, and that the said building is solidly and strongly built—more so than most frame buildings; that the timbers are well braced, and the principal timbers have extra iron
45 braces in addition to the usual braces; that all the timbers are spiked with six-inch spikes, making them more fast to one another than if tenoned; that the whole lumbe' in said building is good, and every way fitted for a frame building of the size of the one in question, the sills being 8 × 6 and most of the scantling 3 × 6. The posts on which the sills stand are of the average thickness of ten-inches square, charred and tarred, and sunk three feet in the ground, with platform-work at the bottom.

his
ALFRED + SHORT.
mark.

Witness: J. N. OLIVER.

Subscribed and sworn to before me (the words "the timber" in line 15 on the 1st page first being interlined) this 5th day of December, A. D. 1872.

ZACH. B. BROOKE, *J. P.* [SEAL.]

46 *Affidavit of P. Stewart, on behalf of complainant.—Filed Ja'y 7, 1873.*

In the supreme court of the District of Columbia.

F. DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Eq. dock. 12.

Patrick Stewart, being by me duly sworn, deposes and says that he is a carpenter and builder, and has thoroughly examined the building which Wesley Fry is building on C street south, between 6' & 7' streets east, and that the timbers therein are sound and well braced with iron, and the same, when finished, will not be dangerous to the public.

I have heard read the affidavit of Alfred Short and concur therein.

his
PATRICK + STEWART.
mark

Witness: W. W. KIRBY.

Sworn to and subscribed before me this 6th day of December, A. D. 1872.

[SEAL.]

E. J. KLOPFER,
Notary Public.

47 *Affidavit of N. Taylor, on behalf of complainant.—Filed Ja'y 7, 1873.*

In the supreme court of the District of Columbia.

FRANCIS DAINESE
vs.
BOARD OF PUBLIC WORKS.

Nicholas Taylor, being by me duly sworn, states that he has worked on the building now in course of erection for Mr. Dainese, by Wesley Fry, on C street, between 6th and 7th streets east, and have examined the same carefully, and believe the lumber and materials used therein to be sound, and the building not unsafe or dangerous to the public. I have heard read the affidavit of Alfred Short and concur therein.

his
NICHOLAS + TAYLOR.
mark.

Witness: W. W. KIRBY.

Subscribed and sworn to before me this 6th day of December, 1872.
[SEAL.] E. J. KLOPFER,
Notary Public.

48 *Affidavit of Samuel Henson, on behalf of compl't.—Filed Jan. 7, 1873.*

In the supreme court of the District of Columbia.

F. DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Equity dock. 12.

Lemuel Henson, being sworn, deposes and states that he is a carpenter and builder, and has carefully examined the building which Wesley Fry is now erecting for Mr. Dainese on C street south, between 6th & 7th streets east, and found the material sound and well braced with iron, besides the usual wooden braces, and do not believe the same unsafe or dangerous to the community. I have heard read the affidavit of Alfred Short and concur therein.

his
SAMUEL + HENSON.
mark.

Witness to signature:
J. N. OLIVER.

Subscribed and sworn to before me this 5th day of December, A. D. 1872, the words "heard" in the 2d line from the bottom being interlined.
ZACH. B. BROOKE, *J. P.* [SEAL.]

49 *Affidavit of M. A. Austin, on behalf of compl't.—Filed Ja'y 7, 1873.*

In the supreme court of the District of Columbia.

F. DAINESE
vs.
BOARD OF PUB. WORKS. } 2993. Equity doc. 12.

M. A. Austin, being sworn according to law, states: I have examined the buildings now in course of erection for Mr. Dainese on C street, between 6th & 7th st's east, and found them of frame, intended for four

houses—the foundation composed of heavy oak and chestnut posts, painted with coal-tar. The frame is put together without morticing, but seem to be securely fastened with heavy spikes, and the corners and most important joints secured with wrought-iron bands. The material is second-hand, and some a little defective, but the most of it much larger than commonly used where the material is new. The timber is not decayed so as to impair its strength or durability. I am a lieu-
50 tenant of police, and visited the buildings, by order of the major and superintendant, on the 31st October.

MANVILLE A. AUSTIN.

Subscribed and sworn to before me this 28th day of December, A. D. 1872.

SAM'L C. MILLS, *J. P.* [SEAL.]

Affidavit of A. Johnson, on behalf of compl't.—Filed Jan'y 7, 1873.

In the supreme court of the District of Columbia.

F. DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Equity doc. 12.

Alfred Johnson, being by me duly sworn, deposes and says that he has worked on the building on C street, between 6' & 7th streets east, now in course of erection for Mr. Dainese by Wesley Fry, and has thoroughly examined the same, and believes the lumber therein to be sound and the building not unsafe or dangerous to the public. I have heard read the affidavit of Alfred Short and concur therein.

his
ALFRED + JOHNSON.
mark.

Witness: W. W. KIRBY.

51 Sworn to and subscribed before me this 6th day December, 1872.

[SEAL.] E. J. KLOPFER,
Notary Public.

Affidavit of Basil Frazer on behalf of compl't.—Filed Ja'y 7, 1873.

In the supreme court of the District of Columbia.

FRANCIS DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Eq. doc. 12.

Basil Frazer, being duly sworn, states that he has examined the buildings which Wesley Fry is erecting for Mr. Dainese on C street south, between 6' & 7th streets east, and believes the same to be of sound material and not unsafe or dangerous to the public. I have heard read the affidavit of Alfred Short and concur therein.

his
BASIL + FRAZER.
mark.

Witness: W. W. KIRBY.

Sworn to and subscribed before me this 6th day of December, A. D. 1872.

[SEAL.] E. J. KLOPFER,
Notary Public.

52 *Affidavit of Cha's E. Walker & L. S. Chapman, on behalf of compl't.—Filed Ja'y 7, 1873.*

In the supreme court of the District of Columbia.

F. DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Eq. doc. 12.

Charles E. Walker and L. S. Chapman, being sworn according to law, states that they are carpenters and builders, residing in the city of Washington, D. C., and carrying on business, the former for 35 years past and the latter for 15 years past. They have examined the buildings in progress of erection for Mr. Dainese, being the same mentioned and forming the subject-matter of this suit, and found the same of second-hand lumber. As to its size, the sills are larger than used generally for such buildings, as also the studding. Some pieces of the lumber are doated, but not so as to weaken or injure the construction of the building. As the building is yet in an unfinished state, and the builder is on the work strengthening by braces and studding the central parts of the
53 building, we can see no good reason why the building should be condemned. The timbers are much stronger than many frames built of new material that have come under our observation. The materials are second-hand, but *is* well seasoned, and we think the building' as good and substantial as are usually built. Our opinions of the strength of the frame-work are strengthened by the fact that the building withstood the severe winds that prevailed last week in its unfinished state.

C. E. WALKER.
L. S. CHAPMAN.

Sworn to and subscribed before me this 20th day of December, 1872, the words "the building" in the 10th line from the top of the 2d page first being interlined.

JAMES LAWRENSON, *J. P.* [SEAL.]

54 *Decree.—Ja'y* 11, 1873.

In the supreme court of the District of Columbia.

FRANCIS DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Equity doc. 12.

This cause came on to be heard on bill, answer, and affidavits. The cause was argued by counsel. It is thereupon this day adjudged, ordered, and decreed that the complainant's bill be, and hereby is, dismissed.

Appeal.—Ja'y 11, 1873.

In the supreme court of the District of Columbia.

FRANCIS DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Equity dock. 12.

The complainant prays an appeal from the decree this day rendered in the above cause.

J. N. OLIVER,
Att'y for Def't.

Appeal entered as prayed.
By the clerk.

55 *Motion to dismiss appeal.—Filed April* 22, 1873.

In the supreme court of the District of Columbia. In general term.

DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Equity dock. 12.

And now, to wit, the appellees in the above-entitled cause, by their attorney, William A. Cook, move the court to dismiss the appeal taken therein, because of the appellant's failure to comply with the provisions of the 9th rule of this court.

WILLIAM A. COOK.

Motion to dismiss appeal overruled.—April 26, 1873.

In the supreme court of the District of Columbia. In general term.

F. DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Equity.

The defendant's motion to dismiss the compl't's appeal for the causes aforesaid is, upon consideration, overruled.

By order of the court.

56 *Appeal dismissed and reinstated April* 29, 1873.

In the supreme court of the district of columbia. In general term.

F. DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Equity.

The motion of Mr. Cook, solicitor for the board of public works, coming on to be heard, it is thereupon ordered that Mr. Dainese's appeal be, and the same hereby is, dismissed. And, upon his motion, said appeal is reinstated, and it is ordered that said cause go to the foot of the calendar.

By order of the court

Motion of def't for affirmance of decree of special term of July 11, 1873.—*Filed April* 29, 1873.

In the supreme court of the District of Columbia. In general term.

F. DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Eq. doc. 1.

57 I move for judgment in this case in favor of the appellee, because of neglect on the part of the appellant or his solicitor to comply with the 94th rule of this court in relation to appeals before the general term, and especially because, first, no printed abstract of the pleadings was prepared or furnished to the court before the commencement of the term or since, and because no such abstract was furnished

the appellee or his solicitor before the commencement of the term, and because three (3) printed copies of the points on which appellant intends by him was not furnished to the solicitor of the appellee before the commencement of the term.

WILLIAM A. COOK,
Solicitor for Appellee.

Affidavit of A. W. Eaton, in support of motion.—Filed May 2, 1873.

In the supreme court of the District of Columbia. In general term. May 2, 1873.

DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Eq.

Alexander W. Eaton, being duly sworn according to law, deposes and says that the buildings situated on C street south, between Sixth
58 and Seventh streets east, the tearing down of which was sought to have been prevented by injunction issuing from this court in the above-entitled cause was, on the 15th & 17th days of March, 1873, torn down by affiant, acting under the authority of the board of public works, and an order issued by Adolf Cluss, inspector of buildings of said board, directing the tearing down of the same.

A. W. EATON.

Sworn to and subscribed before me this 2d May, 1873.
O. S. B. WALL, *J. P.* [SEAL.]

Decree of gen. term.

SATURDAY, May 31, 1873.

Proceedings before the general term of the supreme court of the District of Columbia.

In the supreme court of the Dist. of Col'a.

F. DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Equity docket 12.

59 This cause coming on to be heard, it is this 31st day of May, 1873, adjudged, ordered, and decreed that the decree of the court below be affirmed without prejudice.

D. K. CARTTER,
Chief Justice.

Appeal to Sup' Court of U. S.—Filed June 7, 1873.

In the supreme court of the District of Columbia.

FRANCIS DAINESE
vs.
BOARD OF PUBLIC WORKS. } 2993. Equity.

The complainant, by his solicitor, comes here now in open court and prays an appeal to the Supreme Court of the United States from the decree of this court at the present term, and the same is allowed.

D. K. CARTTER,
Chief Justice.

60 In the supreme court of the District of Columbia, the 9th day of June, 1873.

FRANCIS DAINESE
vs.
HENRY D. COOKE ET AL. } No. 2993. Equity docket 12.

Know all men by these presents that we, Francis Dainese and Charles V. Gordon, are bound unto the above-named Henry D. Cooke, Alexander R. Shepherd, Samuel P. Brown, James A. Magruder, & Adolf Cluss, composing the board of public works of the District of Columbia, in the sum of five hundred dollars, to be paid to the said Henry D. Cooke, Alexander R. Shepherd, Samuel P. Brown, James A. Magruder, & Adolf Cluss, composing the said board of public works, and their successors in office; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this ninth day of June, 1873.

Whereas the above-named Francis Dainese hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named Francis Dainese shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

F. DAINESE. [SEAL.]
CHA'S V. GORDON. [L. S.]

Sealed and delivered in presence of—

R. J. MEIGS.

Approved. Oct. 7th, 1873.

D. K. CARTTER,
Chief Justice.

61 DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court for said District, do hereby certify that the foregoing 60 pages are truly copied from the originals on file and of record in the clerk's office of said court, said originals constituting the entire record in a cause pending and lately decided, entitled Francis Dainese vs. Henry D. Cooke et al. 2993. Equity docket 12.

Witness my hand and the seal of said court this 7th day of October, A. D. 1873.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover.) No. 250. Francis Dainese, appellant, vs. the Board of Public Works of the District of Columbia, consisting of Henry D. Cooke, Alexander R. Shepherd, et al. District of Columbia sup' court. Filed 14th October, 1873.

Supreme Court of the United States.

No. 250.

FRANCIS DAINESE, APPELLANT,

vs.

THE BOARD OF PUBLIC WORKS OF THE DISTRICT OF COLUMBIA, CONSISTING OF HENRY D. COOKE, ALEXANDER R. SHEPHERD, SAMUEL P. BROWN, JAMES A. MAGRUDER AND ADOLF CLUSS.

Appeal from the Supreme Court of the District of Columbia.

Brief and Argument of Appellant.

F. P. CUPPY and JOHN W. ROSS,
Attorneys for Appellant.

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1875.

In the Supreme Court of the United States.

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Appeal from the Supreme Court of the District of Columbia.

BRIEF AND ARGUMENT OF APPELLANT.

Statement of the Case.

On the 26th day of August, 1872, the appellant made a contract with Wesley Frey, a contractor and builder, for the erection of a block of frame buildings in Washington, to be 61 feet 4 inches front and 50 feet in depth—three stories in height, (contract and specifications, pp. 2 and 3 of record.) The contract was submitted to Adolf Cluss, inspector of buildings, who after an inspection of the same, (Bill p. 1, and affidavit of Wesley Frey, p. 5,) issued a a permit for the erection of the same. (P. 2.) The work of construction proceeded to the point of completion where the structure was ready for the roof, (Bill, p. 1,) when on the 25th November, 1872, a notice was given to Dainese issued from the Board of Public Works and signed by Adolf Cluss, inspector of buildings, notifying Dainese that the buildings must be removed immediately or that he, Cluss, would have them taken down at once, (p. 5.) On the 29th Nov., 1872, Dainese filed in the Supreme Court of the District a bill for an injunction, setting forth in substance the facts above stated, (p. 1,) and that the contract was made in good faith, that the building was commenced and carried on in strict accordance with the contract and permit, denying that the material used was insufficient or dangerous, or in violation of the

contract. That he had expended $5,000 upon said buildings and that if taken down as threatened it would work irreparable injury to him. Accompanying the bill as exhibits, were the permit of the Board of Public Works, (p. 2,) the contract between Dainese and Frey, (p. 2,) and the building specifications, (p. 3,) together with the notices from Cluss that the buildings must be removed, (p. 5.) The bill was supported by the affidavit of Frey, to the effect that the material used in the block was in strict accordance with the contract, and not unsound or dangerous to the community and that the building was strongly and substantially erected, (pp. 5 and 6.) On Nov. 29, 1872, a temporary restraining order was issued, (p. 6,) and hearing was set for Dec. 7th, but was not had until Jan. 11, 1873, (p. 30.) The Board of Public Works filed their answer Jan. 4, 1873, admitting that the contract was brought to the notice of the inspector, and that he issued the permit, (p. 7,) but averring on information and belief that the buildings were not being constructed agreeably to the contract. They admit the sending of the notice by Cluss and that it was sent by their authority.

The answer admits that the contract between Dainese and Frey was made in good faith, and aver on information that the material used was insufficient and dangerous, and in violation of the permit, (p. 8.) They deny that the taking down of the building would work irreparable injury, and allege that complainant had ample remedy at law. The answer refers to the Act of Congress by which the Board was constituted, and the power given it to make necessary building regulations which are referred to and made exhibits, (pp. 9 to 22.) The answer also refers to other building regulations previously existing. That the Board of Health had called attention to the plaintiff's buildings in a letter filed as Exhibit. That the buildings were examined by Cluss and discovered by him to be insufficient in workmanship and material, and dangerous, in disregard of the permit and the building regulations. That they had notified plaintiff and that he refused to act in accordance with the determination of the Board. That thereupon the Board determined to remove said buildings if plaintiff did not. That plaintiff refused to remove them or correct defects in them, and that therefore the Board requested the Major of Police to place at the disposal of the Sup't of buildings a sufficient force to enable him to remove said buildings. That on their information and belief the buildings are insufficient and dangerous, and constructed of imperfect and insufficient material, and refer to statements of Morsell, Wilson, Edmonston and Fleming, and the answer of Cluss filed in the cause.

Accompanying the answer are a letter from Verdi, health officer, (p. 22,) addressed to the Board, calling the attention of the Board to the buildings, dated Oct. 22, '72, and three statements, addressed to A. Cluss, signed by Morsell, Wilson and Edmonston, (p. 23,) stating that they had examined the premises in question, pronounc-

ing the premises unsafe for occupancy, of unsafe material and badly constructed. The statements are sworn to, but are not entitled in the cause. The statement of R. I. Fleming, (pp. 23, 24,) is to the effect that he had examined the buildings and found the lumber unsound, and worthless for building purposes, and that the workmanship was of the worst character; that there was no framing, and the whole shell was liable to be blown down at any time. He further expresses an opinion as to the duty of the authorities, and the instrument is sworn to and acknowledged, but is not entitled in the cause, and is addressed to Adolf Cluss. The separate answer of Cluss, (p. 24,) states that he is inspector of buildings and on Sept. 18th plaintiff applied to him for permit to build a row of four three-story frames with shingle roof; that he at first refused it, but it appearing that the contract was made before the promulgation of amended regulations, he finally issued the permit, allowing a three-story frame with shingle roof. He denies that the contract was read and approved by him, but that it was only presented to secure a permit for height of three-stories with roof. That his attention was called to it by the Board of Health; that inspection showed the building was not properly framed; that insufficient and rotten pieces of timber were spliced to obtain the necessary length. That structures will be unsafe to tenants and persons passing by and jeopardise the life of firemen; that if completed they can only be regarded as a nuisance in the community, and are in violation of the permit and building regulations. That he had done all he could to have proper buildings constructed without resort to removal. In support of the bill eleven affidavits were filed affirming the strength and safety of the buildings, the good quality of the material used, and the proper manner of the construction, (pp. 26, 27, 28, 29, 30.)

The cause was heard Jan. 11, 1873, upon bill, answers and affidavits, (p. 30,) and a decree was ordered dismissing complainant's bill. On the same day an appeal was prayed to the Court in General Term, (p. 30.) While the cause was pending in the General Term, the buildings were torn down by order of the Board of Public Works, March 15th and 17th, 1872, (p. 32.) The decree of the Equity Court was affirmed without prejudice May 31, 1873, and the cause was appealed to this Court.

ASSIGNMENT OF ERRORS.

1. The Court erred in affirming the decree, dismissing the complainant's bill.

2. The Court erred in permitting the statements of Morsell, Wilson, Edmonston, Fleming and Hoffman to be received as affidavits on the part of defendants.

BRIEF OF APPELLANT.

It is shown by this record that appellant had first submitted the plans and specifications of the block of buildings in question, and the contract for the construction of the same, to the inspector of buildings, and had obtained from him a permit for the erection of the same, (p. 2.) That contract provided, that the block should be constructed from the lumber on and in the mill on Square 84, and on the quarters at Fort Stanton, (pp. 2, 3.) The permit waived the building regulations to the extent of allowing the block to be three stories in height with shingle roof. The bill shows, (p. 1,) that the construction of the block had proceeded to the point where the roof was to be put on, and when about $5,000. had been expended on said block by the plaintiff, (p. 1,) when he was notified that he must remove said buildings immediately, or that the inspector would be compelled to have them taken down at once at Dainese's cost. The answer of the Board, (p. 7,) admits the intention on their part charged in the bill of throwing the building down, and that the notice sent to Dainese by Cluss, (p. 5,) was given by their authority, (p. 7.) The equity of the bill is to this extent admitted by the answers.

The denial of the plaintiff's right to the relief sought, as set up in the answers, may be discussed under these divisions:—

1. That the material used was insufficient, and the mode of construction dangerous.

2. That defendants were empowered by law to take the proposed action.

3. That plaintiff had a remedy at law.

1. The discussion of the first point involves a brief analysis of the pleadings and proof. The bill alleges that the construction of the block is in accordance with the permit and the contract, and alleges that the material is not insufficient or dangerous, (p. 1.) The affidavit of Frey the contractor, (pp. 5, 6,) is to the effect that the material of which said building is being erected is in strict accordance with the contract, and not unsound or dangerous, and that the building is strongly and substantially erected. The affidavit of S. J. Fague, a practical builder supports the allegations of the bill, (p. 26.) He says: "I do not believe the buildings dangerous to the public." Alfred Short's affidavit, (p. 27,) is to the effect that the timbers are well braced, and the principal timbers have extra iron braces in addition to the usual braces. That all the timbers are spiked with six-inch spikes, making them more fast to one another than if tenoned; that the whole lumber in said buildings is good, and every way fitted for a frame building of the size of the one in question; the sills being 8x6 and most of the scant-

ling 3x6. The testimony of Dennis Fry, (p. 26,) is to the effect that he had worked upon the block in question, that he believed it to be safe and sound, the lumber of good material and not dangerous to the public. To the same effect are the affidavits of Patrick Stewart, (p. 27,) Taylor, (p. 28,) Henson, (p. 28,) Frazer, (p. 29.)

Manville A. Austin, (pp. 28, 29,) states that he is Lieutenant of Police, and that he visited the structure by order of the Major and Superintendent Oct. 31, and he affirms the good character of the construction of the houses—that some of the material is a little defective, but not so as to impair its strength or durability. This view is confirmed by the affidavit of Walker and Chapman, (p. 30.)

The good character of the material and of the mode of construction are supported by the bill, the affidavit of Frey the contractor, and the affidavits of eleven affiants; opposed to these on this question of fact are the answer of the Board, which is only upon information and belief, (p. 8,) the separate answer of Cluss, and six certificates. None of these certificates are entitled in the cause, but are all notes addressed to A. Cluss, or the Board of Public Works, and one is not sworn to. These certificates could not properly be taken as affidavits in support of the answer. (1 Barb. Ch. Practice, 600.) The affidavits in support of the bill were presented by virtue of the 48th equity rule of the Supreme Court of the District of Columbia. (Rules of the Supreme Court D. C., p. 58.) The allegations of the bill, then, may be considered as sustained upon the question of fact as to the strength and safety of the block.

2. Upon this state of facts it is difficult to ascertain where the Board of Public Works derived the power to destroy this block as they had threatened. Were it a public nuisance any citizen might have abated it. But it is not claimed on that ground. In the answer, (p. 8,) the Act of Congress is quoted with reference to the powers of the Board "They shall make all necessary regulations respecting the construction of private buildings in the District of Columbia" which is made "subject to the supervision of the Legislative Assembly." 16 Stat. at Large, p. 426. The power to make regulations could not properly include the power to tear down buildings nor the power to make a regulation or by law creating a forfeiture. Kirk *vs.* Newell, 1 T. R. 124. The charters of Washington and Georgetown referred to in the answer of the Board, (p. 8,) under which they claim the right, were repealed by the Territorial Act, (16 Stat. p. 419,) Section 41, on and after June 1, 1871, and by General Clause 77 of that act it is declared that upon the repeal of said charter the District of Columbia shall be the successor of said Corporations, so that the Board of Public Works could not properly wield the powers exercised by such Corporation.

It will be found that none of the building regulations named in the answer were violated by the construction of this block. Had they been so violated while the owner might have been liable to

the imposition of the fine prescribed in Section 61, (p. 21,) it would seem that the course prescribed by the Board for its own government in Section 61, (p. 21,) requiring an application to the Equity Court for an injunction against its erection would be the limit of their power, although the law made by the Board for the government of the Court in the latter part of that Section might seem to magnify their office. That a mere regulation made by the Board of Public Works could not subject a structure to the penalty of being a public nuisance unless it was so by the common law is settled by the case of Bates *vs.* the District of Columbia, decided in the General Term at the April Term 1874, and reported in the Washington Law Reporter of Oct. 13, 1874, No. 40, pp. 261 *et seq.* The following outline of the case is presented.

Under the same act which constituted the Board of Public Works a Board of Health was established "whose duty it shall be to declare what shall be deemed nuisances to health, and to provide for their removal." Under this clause the Board of Health passed an ordinance declaring certain things nuisances to health, and affixed a penalty for maintaining them, to be recovered before the Police Court. Under this ordinance Bates, a manufacturer of soap and candles, was complained of before the police court, and the case was taken up to the General Term on *certiorari*. The Court dismissed the complaint, holding "that the power conferred on the Board did not authorize it to declare anything a nuisance which was not so by the common law;" that the power assumed by the Board could not be conferred because it would practically affect a confiscation of Bates' property "without due process of law." Mr. Justice Wylie concurred, expressing the opinion "that where property was involved in the abatement of a nuisance the proceeding must be by indictment and trial by jury." It will be observed that the power conferred on the Board of Health was much greater than that given the Board of Public Works, and yet it did not assume to remove what it had declared to be a nuisance by ordinance, except through the fine to be levied by a Police Court.

The record then presents the case of public officials about to commit an illegal and unwarranted act, which afforded ground for the intervention of equity.—High on Injunctions, § 788, 793, 769, 764; Lumsden vs. Milwaukie, 8 Wis. 485; Schuster vs. Metropolitan, 49 Barb., 450; Mayor vs. Groshom, 30 Md., 436; Pieri vs. Shieldsboro, 42 Miss., 493; Cooper vs. Alden, Harrington, (Mich.,) 72; Green vs. Green, 34 Ills., 320; Mohawk vs. Archer, 6 Paige, 83; Oakley vs. Trustees, id. 262; Green vs. Oakes, 17 Ills., 249; Osborn vs. Bank U. S., 9 Wheat., 738.

While the act against which relief was sought in equity was a threatened trespass, it was such an one as the Court should have enjoined. Remedy at law would have been inadequate. The threatened trespass involved destruction of valuable property. Damages in

an action of trespass would be poor remuneration for the destruction of a block of buildings in course of erection. The defendants, although a quasi Corporation had no fund out of which the collection of a judgment against it could be enforced. They had no power to levy assessments or collect revenues. They were a power entirely outside of and independent of the District of Columbia, and the District has been held not liable for the torts or omissions of the Board by the Supreme Court of the District. (Barnes vs. The District, Washington Law Rep., Vol. 1, No. 32, page 198.)

"The fact that persons injured by the act of public officers have a possible remedy at law will not deprive them of relief in Equity." High on Injunctions, § 801; White vs. Flannigan, 1 Md., 545; Shipley vs. Rutter, 7 Md., 413; Bougher vs. Crane, 27 Md., 41; Varick vs. The Mayor, 4 John. Ch., 53; Livingston vs. Livingston, 6 John. Ch., 497; Yates vs. Milwaukie, 10 Wall., 497; Ryan vs. Brown, 18 Mich., 196.

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